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The Law of Religious Societies and Church Corporations.

The February number, 1874, of the American Law Register, has the third chapter on the above subject from the pen of the Hon. Wm. Laurence, of Bellefontaine, Ohio. The learned author is exhausting the subject, and his notes display an amount of research and careful discriminating labor which are seldom witnessed in articles contributed to the press. We trust the series will, when completed, be collected and published in book form.

Conclusiveness of Judgments of Sister States.

The unsatisfactory state of the authorities on the question as to the conclusiveness of the records of judgment in other states is well known. The act of congress passed under the authority conferred by the constitution, art. 4, sec. 1, declares that records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States as they have by law and usage in the courts of the state from whence said records are taken. The subject was before the Supreme Court of the United States, in the case of Knowles v. The Logansport Gaslight Company, decided on the 4th instant. An action was brought in the United States circuit court for Minnesota, on a judgment rendered by a court of record of Indiana. The record of that judgment recited that the defendant "had been duly served with process to appear," and the record of the cause contained a summons, with the return of the sheriff thereon endorsed, showing a personal service of the writ on the defendant. On the trial the defendant was offered as a witness to prove that he had not been personally served with process.

The Supreme Court, applying the principle of Thompson v. Whitney, decided by it at the same term, hold that the proposed evidence was admissible, although according to the opinion of the courts in Indiana, such a judgment would seem to be conclusive between the parties in that state. ——— v. Pratt, 23 Indiana, 628; Wescott v. Brown, 13 Indiana, 83; Bigelow on Estoppel, 237.

Is a Person Responsible to the Municipal Tribunals of one Country for Acts committed while acting as the Executive head of another Government?

BUENAVENTURA BAEZ, ex-president of the republic of Santo Domingo, was recently arrested in a civil action brought in the supreme court at Brooklyn, New York, by one Davis Hatch, and held to bail in the sum of $25,000. The substance of the complaint was, that the defendant, while acting as president of Santo Domingo, illegally arrested and imprisoned the plaintiff, and confiscated his property. On the 4th instant the case was heard before Judge PRATT, on a motion to vacate the order of arrest. Mr. Choate, for the defence, said that so far as the question here involved was concerned it was immaterial whether the acts of Baez were a stretch of power or not. He contended that in a case like this it was not legal to come into a municipal court like the present to get grievances redressed. Resort must be had to higher and diplomatic channels. He argued that for what was done by the head of another government by virtue of his official power he could not be called to account, even after he had ceased to be the head of the government, by the municipal courts of another country; that it all laid within the domain of the law of nations exclusively, and that if this plaintiff had suffered wrong thereby he had either one of two means of redress. First, if, as he said, there was an extension of the power of the president, a going beyond the constitutional limits of the president, he (plaintiff) could apply to that government which the president had offended—that was the Dominican Republic. Second, if a citizen of the United States, as he claimed to be, he had his remedy, as all other citizens had, through the intervention of his own government.

Mr. Maxwell, for the plaintiff, argued that the defendant was sued as a private person, as the so-called president of a so-called republic, and he claimed to be able to show that he was president over no existing nation. He was responsible to this court as a private individual.

Judge PRATT took the papers, and the next day issued an order vacating the order of arrest, with costs.

Another suit has been commenced against Baez, the plaintiff being Mr. Julius M. Columbani, of New York. His counsel applied to Judge PRATT for an order of arrest against the defendant. The application was based on a lengthy affidavit, setting forth that in 1870 the plaintiff was imprisoned by Baez illegally, and that his health, commercial credit and reputation were greatly impaired thereby. He claims damages in the sum of $200,000. The application was denied. It will probably be renewed before some other supreme court judge in New York or Brooklyn.

Bankruptcy—Illegal Preference—Possession of the State Courts.

The ruling of the Supreme Court of the United States, in Wilson v. City Bank of St. Paul, 1 CENT. LAW JOUR. 40, was applied and followed in Appleton v. Bowles *et al.*, 5 Daily Register, No. 49, determined in the supreme court of New York, first department in general term.

The proceeding was commenced by attachment in the state court, and after a receiver had been appointed and had taken possession of the property attached, a petition in bankruptcy was filed against the defendants in the federal court for Massachusetts. Thereupon the receiver applied to the state court for an order directing him to deliver the assets in his hands to the assignee in bankruptcy, but the court instructed him to hold them until further order. The attorney for the plaintiff afterwards made a similar motion, which was denied. Meanwhile another creditor, Alvah Miller, having obtained a judgment against the defendant Bowles, applied to have it satisfied out of the assets in the hands of the receiver, which was done.

Appeals were severally taken from these orders to general

term, and they were severally affirmed. DONOHUE, J., delivering the judgment of the court (with whom DAVIS, P. J., and DANIELS, J., concurred), said: "The first ground of the appeal would seem to be that the bankrupt court, having taken possession of the estate under proceedings, takes from this court all further authority in the matter, and that all the assets must be handed over to such assignee, no matter what may be the question litigated here. This is a mistake. This court and its receiver first obtained the possession of the property and the control of the litigation, and has the right to finish its proceedings before being interfered with by any other jurisdiction. (Taylor v. Carryl, 20 How. 583, and cases there cited.) If the assignee has rights, or is entitled to the fund, his title and right can be, and will be, disposed of by this court as the law shall direct.

"The next ground on which the appeal is pressed is, that the levy on the attachment is void under the bankrupt act, and that this court will not give to the petitioner, Miller, a preference prohibited by that act. If the case presented facts showing such prohibited preference, this court would be bound to protect the assignee against it. Whatever may have been the opinion or course of decisions heretofore on that point, we suppose the case Wilson v. The City Bank of St. Paul, decided by the Supreme Court of the United States at its present term, is decisive on the question. In the opinion of the court, delivered by Mr. Justice MILLER, in which he thoroughly examines the point, he holds that liens by attachment or execution, obtained prior to the proceedings in bankruptcy in state courts, are valid, and take preference to the claims of the assignee, unless an intent to evade the bankrupt act is shown, and that the fact of taking steps to obtain satisfaction by the ordinary course of law, with a knowledge on the part of the creditor that the debtor is insolvent, is not evidence of such improper intent, and that in the absence of any further facts, the party who obtains such preference can hold it. As on this point the opinion is conclusive on this court, it follows that the preference obtained by Miller was valid, and the order directing payment to him out of the fund obtained from the property he attached, must be affirmed."

Removal of Causes from State to Federal Court.

The judiciary act limited the right to remove a cause from the state to the federal court to the *non-resident defendant* when sued by a resident plaintiff (sec. 12); and if there were several real defendants all must be non-resident to entitle any of them to a removal. In other words, if the cause was not removable as to all of the defendants, it was not removable as to any. But by the act of July 27, 1866, the *non-resident defendant*, in a case where he is joined with a resident defendant, may have the cause removed as to himself, where there can be a final determination of the controversy without the presence of the resident co-defendant. This leaves the cause to proceed in the state court as between the resident plaintiff and the resident defendant, and to proceed in the federal court as between the plaintiff and the non-resident defendant. This is the first and only statute which in any event authorizes a *portion* of the defendants to remove a cause from the state to a federal court.

On the 2d of March, 1867, an act was passed professing to be an *amendment* of the act of July 27, 1866, which gives the right of removal to the non-resident party, *plaintiff or defendant*, at any time before final hearing or trial, on the ground of prejudice or local influence. This is the first act that in any event extended the right of removal to a plaintiff who had elected to bring his suit in a state court. Johnson v. Monell, Woolw. 390. The effect of the act of 1867 upon that of 1866, and the relation of the two acts to each other, have occasioned no little difficulty of construction. One important point under the act of 1867 has recently been set at rest by the decision of the supreme court (March 5th) in the case of the Grover & Baker Sewing Machine Company, Wheeler & Wilson Sewing Machine Company, and the Singer Manufacturing Company v. Florence Sewing Machine Company, in error to the Supreme Judicial Court of Massachusetts.

The action was brought by the Florence company, a Massachusetts corporation, against the other companies, to recover back certain moneys alleged to be due from them by reason of over-payments made by the Florence company as patent rent, under an agreement providing for a reduction in the rent in case of the granting by the other companies of any additional licenses. The suit being brought in the supreme judicial court of the state, motion was made to remove it to the circuit court of the United States. The Grover & Baker company was a Massachusetts corporation also, but the other two were foreign corporations—one of Connecticut and the other of New York. The court below held that where one of the defendant corporations was of the same state with the plaintiff, where the suit was brought, removal was not authorized, and the trial proceeded and resulted in favor of the Florence company. The question before the United States Supreme Court was whether the state court ruled the question of removal correctly, and its view was sustained. Mr. Justice CLIFFORD, delivering the opinion of the court, says: "Either the non-resident plaintiff or non-resident defendant may remove the cause under the act for that purpose, provided that all the plaintiffs or all the defendants join in the petition, and all the parties petitioning are non-residents as required under the judiciary act; but it is a great mistake to suppose that any such right is conferred by that act when one or more of the plaintiffs, or one or more of the petitioning defendants, are citizens of the state in which the suit is pending, as the act is destitute of any language which can be properly construed to confer any such right, unless all the plaintiffs or all the defendants are non-resident and join in the petition." MILLER and BRADLEY, JJ., dissented.

This seems to support one point ruled in Allen v. Ryerson, 2 Dillon, C. C. R. 501, that where a case for the removal of a cause is made under the act of July 27, 1866, the petitioner therefor is not obliged to make an affidavit such as is required by the act of March 2, 1867.

Railway Consolidation—Effect on Municipal Bonds—Decision of United States Supreme Court in Putnam County v. Nugent.

A new and important point has recently been decided by the Supreme Court of the United States, in Putnam County v. Nugent, touching municipal liability on railroad-aid bonds. The case went from the northern district of Illinois, and the judgment of the circuit court in favor of the county was reversed. The opinion of Judge BLODGETT is reported in full

in 5 Chicago Legal News (August 23, 1873), p. 533. The material facts were these: In June, 1869, an *Illinois* corporation existed, known as the Kankakee and Illinois River Railroad Company, and counties along its line were authorized to subscribe for its stock and issue bonds therefor, provided the project was sanctioned by a vote of the people. In July, 1869, and again in February, 1870, the people of Putnam county voted to subscribe for stock in the above named railroad corporation, but no subscription to that company was in fact ever made. On and before the 21st day of October, 1870, there existed in *Indiana* a corporation known as the Plymouth, Kankakee and Pacific Railroad Company, with power to construct a road from the easterly line of Illinois to Plymouth, Indiana. On the 21st day of October, 1870, the corporate rights, stock, powers and franchises of the two corporations above named *were consolidated*, and the consolidated company became known as the Plymouth, Kankakee and Pacific Railroad Company, with a largely increased capital. It was printed in the articles of consolidation that the stockholders of the original companies should be stockholders in the consolidated company.

After the consolidation, and without any new election, the bonds previously voted were issued by the county of Putnam (whose officers assented to the consolidation) and delivered to the consolidated company. The bonds thus delivered were, however, *made payable*, not to the consolidated company, but to the company in existence when the vote was taken and in whose favor the vote was had. Accordingly the bonds recited that they were "issued for the subscription to the stock of the Kankakee and Illinois River Railroad Company, in pursuance of a resolution of the board of supervisors of said county." The plaintiff was a holder for value. The Kankakee and Illinois River Company had power by its charter to consolidate with another company; and the articles of consolidation were on file in the proper office. Following the principle of Clearwater v. Meredith, 1 Wall. 25, the court below held that the corporate existence of the Kankakee and Illinois River Railroad Company ceased when the consolidation was effected, and that its franchises became merged in the consolidated company, which was a corporation with a more extended line of road, with larger capital stock, with a different directory, and under the control of the legislature of two states instead of one, and therefore the authority to issue bonds which had been voted, ceased absolutely on the legal demise of that company. Assuming this to be true, the court below held that the doctrine of the well known case of Marsh v. Fulton County, 10 Wall. 676, applied to and controlled that case. The Fulton county case asserted the principle where a popular vote was necessary, and the vote was to one corporation, and the bonds under that vote were made and delivered to another corporation into which the original corporation had been changed by legislative act subsequent to the vote, that even a *bona fide* holder of bonds thus issued could not recover. We have not yet seen the text of the opinion of the supreme court in the Putnam county case, but inasmuch as there was legislative authority to the county to subscribe to the stock of the railroad company to which the bonds of the county were made payable, and they were issued by the officers of the county after after a popular vote had in fact been had, the court probably considered the case to fall within the principle so often declared as the law of this class of securities, viz: "that when a corporation has power, under any circumstances, to issue negotiable securities, the *bona fide* holder has a right to presume that they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached in the hands of such a holder than any other commercial paper." Per CLIFFORD, J., in Lexington v. Butler, 14 Wall. 282.

The judgment in the Putnam county case is one which possesses great interest in Missouri, where many bonds voted to companies before consolidation have been issued without a new vote to the consolidated company; but some of these cases differ from the Putnam county case in the circumstance that the bonds were issued to the consolidated company instead of the original company, and the history of the transaction was displayed on the face of the bonds by way of recital. How important this difference is, remains to be judicially determined. We shall publish the Putnam county decision at an early day. MILLER and DAVIS were the only judges who dissented, from which it would appear that FIELD, J., who delivered the opinion in the Fulton county case, considered the two cases to be distinguishable.

Can a Married Woman living apart from her Husband be adjudged a Bankrupt?

IN RE JULIA LYONS.

District Court of the United States, District of California, January 29, 1874.

Before Hon. OGDEN HOFFMAN, District Judge.

1. **Bankruptcy—Married Women.**—In a state whose statute law makes a married woman living apart from her husband liable to be sued in all actions as f *sole*, she may be proceeded against under the bankrupt law.

W. H. Fifield, for petitioning creditors; *Whiting* and *Naphthaly*, for respondent.

HOFFMAN, J.—The question raised by the demurrer in this case, is whether the respondent, being a married woman, is liable on a contract to pay rent, and, if she has committed an act of bankruptcy, can be adjudged bankrupt. It appears that the husband of the respondent has long since renounced and abandoned all his marital rights and duties. For twelve years Mrs. Lyons has lived separate and apart from him, supporting herself and her minor children by her own exertions. In the course of her business as keeper of a lodging-house, she has contracted an indebtedness for rent, and being so indebted, and in contemplation of bankruptcy and insolvency, has made, as is alleged, an assignment of her property in fraud of the bankrupt act.

It is urged by the respondent's counsel that the contract of a married woman for the payment of money is void, and that the petitioning creditor has no debt which the court can recognize. On this point numerous authorities are cited; but as they, for the most part, are decisions under the act of April 17, 1850, and the amended act of May 12, 1862, no examination of them is necessary. The decision of the question before us turns upon the force and effect to be given to the act of March 9, 1870. (Laws of 1870, p. 226.)

The first three sections of that act are as follows: Section 1. "The earnings of the wife shall not be liable for the debts of the husband." Section 2. "The earnings and accumulations of the wife and her minor children living with her, or being in her custody, while the wife is living separate and apart from her husband, shall be the separate property of the wife." Sec. 3. "The wife, while living separate and apart from her husband, shall have the sole and exclusive control of her separate property, and may sue and be sued without joining her husband, and

may avail herself of, and be subject to, all legal process in all actions, including actions concerning her real estate." The fourth section prescribes the mode in which she may convey her real estate.

The object of these enactments is apparent. It was to secure to the wife, when abandoned by her husband, the fruits of her own industry, and to enable her to support herself and her children out of her earnings and accumulations, free from his interference or molestation. For this purpose her earnings and accumulations, which at common law belonged to her husband, are declared her separate property, and her rights in respect of such property are carefully defined. She is to have the sole and exclusive control of it; she may separately sue or be sued, and may avail herself of and be *subject* to *all legal process* in *all actions*. That the principal intention of the legislature was to protect deserted wives in their just rights, and not to impose upon them additional liabilities, is admitted. For this purpose they were placed in the position of *quasi femes sole*, and were granted all the powers necessary to enable them to earn their own livelihood, and to retain and enjoy the fruits of their industry. But to accomplish this object, it was evidently necessary to create new liabilities as well as to confer new rights. The ability to sue for moneys earned by or due to her was clearly indispensable to enable the wife to attain the object contemplated by the law.

Justice and reason, and even her own interests, demanded that she should herself be liable for all debts contracted by her. For without such liability how could she obtain the credits usually necessary in the conduct of any business; and what could be said of the morality of a law which should announce to a woman that for all debts and demands due her she shall have the right to sue and enforce payment, but as to debts due by her she may plead her coverture as a conclusive bar to the action?

The separate property of a married woman has, on general principles of equity, been held liable for debts contracted in respect to it or in and about its management and improvement. The act of 1870 created a new species of separate property in the earnings and accumulations of the wife while separated from her husband.

The equitable principles already adopted by the courts, and usually enforced by statute, required this new species of separate property should be liable for debts incurred in its creation or management, and in the course of the business, the proceeds of which the statute enables the wife exclusively to enjoy. Further discussion, however, is needless, as the language of the act is too explicit to be mistaken. It enacts that the wife separated from the husband "may sue and *be sued*, and that *she* shall be subject to all *legal process in all actions*." This language is obviously inconsistent with any exemption from liability to suit for a just debt on the pretext that, being a married woman, her contracts for the payment of money are void.

The respondent being thus found to have incurred a valid indebtedness and a liability to be sued therefor as if a *feme sole*, she may, if she has committed an act of bankruptcy, be adjudged a bankrupt. Hilliard on Bankruptcy, p. 49; Avery and Hobbs on Bankruptcy, pp. 33-4; *in re* Kinkead, 7 N. B. R., p. 439.

The demurrer is overruled and the respondent allowed ten days to answer the petition.—*Pacific Law Reporter.*

NOTE.—Whether a married woman may be proceeded against under the bankrupt act, would seem to depend, in each particular case, upon her power of making contracts, or of engaging in trade or other business independently of her husband. The general rule of the common law is that a married woman possesses no such power; but that if she enters into contracts or engages in trade or other business with her husband's consent or ratification, she acts simply as his agent; and hence that the fruits of such contracts, or the accumulations of such trade or business, belong to him and not to her. Bish. Mar. Wom., § 733; Switzer v. Valentine, 4 Duer, 96; Jenkins v. Flinn, 37 Ind. 349. Wherever this rule of the common law obtains in full force, it is clear that she cannot be adjudged a bankrupt. *In re* Goodman, 8 N. B. R. 380.

But this rule admits of exceptions, and these may be arranged into two classes: 1. Exceptions created by local custom or by local law. 2. Exceptions growing out of a temporary cessation of the coverture.

Under the first of these exceptions is the case of frequent occurrence in the English books, where a married woman acts as a *sole trader* according to the custom of London. *Ex parte* Carrington, 1 Atk. 206; Lavie v. Philips, 3 Burr. 1776; S. C. 1 W. Black. Rep. 570. See also in Pennsylvania, Burke v. Winkle, 2 Sergt. & Rawle, 189; in South Carolina, Newbiggin v. Pillans, 2 Bay, 162; in Louisiana, Christensen v. Stumpf, 16 La. An. 50; Spalding v Godard, 15 La. An. 277; Bowles v Turner, 352 ib.; in California, Melcher v. Cuhland, 22 Cal. 522; Abrams v. Howard, 23 Cal. 388. Under the same head would fall those cases like *re* Lyons, *supra*, where by statute in particular states, a married woman may, under certain circumstances, contract liabilities, carry on business and sue and be sued independently of her husband, and as a *feme sole*. In these cases there would seem to be no doubt that she is amenable to the bankrupt law. As in New York: *In re* O'Brien, N. B. R. Sup. 38; Graham v. Starks, 3 N. B. R. 92. Or in Illinois: *In re* Kinkead, 7 N. B. R. 439. Thus it was held, in the last case in the United States district court at Chicago, by BLODGETT, J., that where a husband and wife carried on a business in partnership, their status was such, under the statutes of Illinois relating to married women, that the *firm* might be proceeded against in bankruptcy; and hence that the partnership creditors were entitled to a preference in the distribution of the assets, over a creditor of the husband, whose demand had accrued prior to the organization of the firm. And it was intimated that the wife would be separately adjudicated a bankrupt if it should be found necessary in the course of the proceeding to do so, in order to reach any individual property she might have. In the case of *Re* Rachel Goodman, 8 N. B. R. 380, determined in the United States district court for Indiana, before GRISHAM, J., the principle above stated is fully recognized; but when applied with reference to the statutes of Indiana relating to married women, as interpreted by the supreme court of that state, the case resulted in a dismissal of the petition. It was found under the Indiana statutes, as expounded by the state supreme court, (1), that a married woman cannot engage in any kind of trade or business on her own account unless she have separate property; (2) that if a married woman, not having separate property or means of her own, engage in and carry on business, the profits, if any there be, belong to the husband as the earnings of the wife; and (3), that a married woman in Indiana, possessed of no separate estate, is relieved of none of the disabilities imposed upon her by the common law. The petition failed to show that Mrs. Goodman was possessed of any separate property or means with which she was carrying on her business, and it was held to follow that she could not be adjudged a bankrupt. So in the case of *Re* Slichter, 2 N. B. R. 107. in Minnesota, where the statute allows a married woman, under certain circumstances, to engage in trade in her own name, upon obtaining a license from a probate justice, in which case the business and profits become her separate property, and she is bound by her contracts as a *feme sole*, NELSON, district judge, held that a married woman who had been engaged in business as a member of a partnership firm, but without complying with the statute, could avail herself of the plea of coverture to defeat the bankruptcy proceedings against her.

Under the second head, which embraces the question whether a married woman may be adjudged a bankrupt where the marriage relation has been temporarily interrupted, the books furnish many instructive decisions defining the circumstances under which, independently of local custom or statute, a married woman may be separately sued. These decisions embrace cases where a married womam lives apart from her husband on a separate maintenance; in which case it has been held and afterwards denied, in England, that the wife may be sued at law as a *feme sole*. Corbet v. Poelnitz, 1 Term R. 5. *Contra*, Compton v. Collinson 1 H. Blacks. 350; Clayton v. Adams, 6 Term R. 604; Marshall v. Ratton, 8 Term R. 545. And Chancellor KENT states (2 Com. 161) that the rule of Corbet v. Poelnitz has never been adopted in this country. It has also been held in England that a wife may be sued at law whose husband is an absent alien enemy, and is under an absolute disability of returning. Derry v. Duchess of Mazarine, 1 Ld. Raym. 147. Or where he had been transported. Sparrow v. Caruthers, 2 W. Black. 1197. Or had been banished or had abjured the realm. Lady Belknap & Wayland, 1 Co. Lit. 132 b, 133 a. So it has been held in Massachusetts that a married woman who had been divorced *a mensa et thoro* might sue and be sued as a *feme sole* in respect of property acquired or debts contracted by her subsequently to the divorce. Dean v Richmond, 5 Pick. 461; Pierce v. Burnham, 4 Metcf. 303. And it has been held in the same state that a *feme covert*, whose husband had deserted her in a foreign country, and who had thereafter maintained herself as a single woman, and for five years had lived in that commonwealth, the husband being a foreigner and having never been within the United States, was competent to

sue and be sued as a *feme sole*. Gregory v. Paul, 15 Mass. 31. And the question is now said to be settled in Massachusetts, as a necessary exception to the rule of the common law, placing a married woman under a disability to contract or maintain a suit, that where the husband was never within the commonwealth, or has gone beyond its jurisdiction, has wholly renounced his marital rights and duties, and deserted his wife, she may make and take contracts, and sue and be sued in her own name as a *feme sole*. "It is," said SHAW, Ch. J., "an application of an old rule of the common law, which took away the disability of coverture where the husband was exiled or had abjured the realm." Gregory v. Pierce, 4 Metcf. 478. And within the meaning of this principle, the residence of the husband within another of the United States is held to be equivalent to his residence in a foreign state. Abbot v. Bayley, 6 Peck, 89. "But," said SHAW, Ch. J., in Gregory v. Pierce, *supra*, "to accomplish this change in the civil relations of the wife, the desertion by the husband must be absolute and complete; it must be a voluntary separation from and abandonment of the wife, embracing both the fact and intent of the husband to renounce *de facto*, as far as he can do it, the marital relation, and leave his wife to act as a *feme sole*. Such is the renunciation, coupled with a continued absence in a foreign state or country, which is held to operate like an abjuration of the realm." In Love v. Moynehan, 16 Ill. 277, 282, the supreme court of Illinois, after reviewing many modern cases, hold the law to be "that where the husband compels the wife to live separate from him, either by abandoning her, or by forcing her, by whatever means, to leave him, and such separation is not merely temporary and capricious, but permanent and without expectation of again living together, and the wife is unprovided for by the husband in such manner as is suited to their circumstances and condition in life, she may acquire property, control her person and acquisitions, and contract, sue and be sued in relation to them, as a *feme sole*, during the continuance of such condition."

So it has been held in a recent case in Georgia, that, on general principles, a married woman whose husband has deserted her and resided in another state, has the right to contract and be contracted with, to sue and be sued, as if *sole*. Clark v. Valentino, 41 Ga. 143. See also as supporting the same view, the following cases: Rhea v. Rhermer, 1 Peters, 105; Cornwall v. Hoyt, 7 Conn. 427; Arthur v. Broadnax, 3 Ala. 557; Jones v. Stewart, 9 Ala. 855; Roland v. Logan, 18 Ala. 307; Rose v. Bates, 12 Mo. 47; Starrett v. Wynn, 17 Serg. & Rawle, 130; Bean v. Morgan, 4 McCord, 148; Valentine v. Ford, 2 P. A. Brown, 193.

It would seem to follow, by reasonable analogy, that where a married woman is, for any such reason, liable to be sued as if *sole*, at least in an action at law, she may, if otherwise amenable to the provisions of the bankrupt act, be proceeded against thereunder. Accordingly it was held in England in *ex parte* Franks, 7 Bing. 762, that the wife of a convict sentenced to transportation was liable to be made a bankrupt, she having become a trader, although her husband had not been sent out of England. The sentence of transportation against her husband rendered her liable to suit generally; and the fact that she had become a trader brought her within the provisions of the English bankrupt law.

Life Insurance—Right of Insured to notice of Premiums Falling Due—Duty of Company to furnish Agent with Receipts.

SARAH L. MOREY v. NEW YORK LIFE INSURANCE COMPANY.

In the Circuit Court of the United States for the Southern District of Mississippi, November Term, 1873.

Before Hon. ROBERT A. HILL, District Judge.

1. **Life Insurance—Representations of Agent that Notice of Accrual of Premiums will be Given.**—Where the local agent of a life insurance company, on receiving payment of the first premium due on a policy, represented to the assured that the company was in the habit of giving thirty days' notice to its policy-holders of the time when each premium falls due, and promised that he would give such notice, and the assured died two days after the second premium fell due, no such notice having been given to him, and the proof failed to show that the agent had any authority to make such an agreement, it was held that the beneficiary could not recover on the policy.

2. **——. Payment of Premium to Local Agent—Failure of Company to forward Receipt to Local Agent.**—Where the company's receipt for the premium was not received by the local agent to whom it was to be paid, until two days after the death of the insured, it was held, under the circumstances above stated, that the beneficiary could not recover on the policy; otherwise if the premium had been tendered before it fell due.

3. ——. ——. ——. Where by express agreement, or by the course of business between the parties, it is understood that payment will be made to the local agent, and no notice has been given in sufficient time that payment shall be made at the office and principal place of business stipulated in the contract, a tender of payment to the local agent, whether received by him or not, will excuse the policy-holder and prevent a forfeiture.

The facts are stated in the opinion.

HILL, J.—This action at law was brought in the circuit court of Madison county, and removed into this court, to recover the amount of a policy of insurance issued by the defendant on the first day of April, 1871, for the sum of five thousand dollars, payable to plaintiff upon the death of her late husband, John B. Morey, upon the payment of $197.90, then made, and the same amount to be paid thereafter on the first day of April of each year during the continuance of said policy, with the usual condition annexed, that if said premium should not be paid on or before the first day of April of each year, the policy should become void, and all payments theretofore made become forfeited to defendant.

The plea is that the policy became void under this stipulation by reason of the non-payment of the premium due on the first day of April, 1872; to which the plaintiff replies: First, that when said John B. Morey made application for said policy it was to one Morey, a local agent of defendant, doing business for defendant in the city of Canton; that at the time he stated to said agent that he feared he would forget the time when the premiums would become payable and fail to make them in proper time, and thereby the policy would become forfeited; that the said agent stated, as an inducement to said John B. to take said policy, that the company was in the habit of giving thirty days' previous notice of the time, and that he would give the notice and save the forfeiture; and, secondly, that it was understood that payment would be made to the local agent in Canton; that, at the time the premium fell due, the agent at Canton had not been furnished with the printed premium fell due the agent at Canton had not been furnished with the printed premium receipts, without which he was not authorized to receive payment; that the failure to give the notice and to furnish the receipt was a waiver of the right to a forfeiture of the policy.

A jury being waived, the questions of both law and fact are submitted to the court.

The only facts shown by the proof, and necessary to be stated for the application of the rules of law, are as follows:

Morey, the agent of the defendant, did make the statements to John B. Morey, at the time the application for the policy was made, as stated in the pleadings; the advance premium was paid on the delivery of the policy; no notice of the time the premium fell due was given; John B. Morey died on the 3d day of April, two days after the premium fell due, without having paid or tendered the same to any one. On the 5th, payment of the premium was tendered to the agent at Canton, and refused, for the reason that John B. Morey had died on the 3d.

That the premium receipt was not forwarded to the general agents at Vicksburg until the 4th, and not forwarded to the local agent until the next day.

The question upon the pleadings and proof is, did the want of notice of the time of payment, and the absence of the receipt in the hands of the local agent, excuse the payment of the premium upon the day it became due, and thereby avoid the forfeiture stipulated in the contract?

The policy, and the conditions annexed to it, constituted the contract, and must be held binding on both parties to it, unless its conditions have been waived by some act or omission of the party against whom it is sought to be enforced, or by the authorized agent of such party.

The proof fails to show that the agent, Morey, had any authority to engage that notice should be given; indeed, none such is claimed; but it is claimed that, being the agent, it was a fraud in him to make such a promise, as it misled the assured, and induced him to take the policy, which he would not otherwise have done;

but it is apparent from the proof that he did not make the promise as agent, or pretend to bind the defendant, but only made it as a friend and relative of John B. Morey; it was a mere personal promise, for the fulfillment of which he could only look to him who made it; Morey, the agent for this purpose, was more the agent for the assured than the insurer; so that upon the facts, this want of notice cannot avail the plaintiff.

The remaining question is, did the failure to place in the hands of the agent at Canton the premium receipt on or before the time of payment, waive and excuse payment on that day? The conditions of the policy require payment at defendant's office in the city of New York, unless a different place is stipulated for in writing between the parties, or to an agent having for delivery a printed receipt, signed by the president of the company, or other officer mentioned.

The advance payment was made to the local agent in Canton upon the delivery of the policy. The fact that the premium receipt for the second payment was forwarded to the local agent in Canton shows that that was the place where payment was expected to be made, and where it doubtless would have been made but for the death of said John B. Such evidently being the understanding between the parties, I am satisfied that had the tender of the amount due been made to the local agent at Canton on the day and within the time stipulated, the forfeiture claim could not have been maintained; but, unfortunately for the plaintiff, this was not done. I cannot accept the position as correct that nothing can avoid the forfeiture but an agreement of waiver of payment made by the principal officers of the company in New York, or by actual payment or tender of payment there, or to a local or other agent having the premium receipt, signed as provided for. Where, by an express agreement or by the course of business between the parties, it is understood that payment will be made to the local agent, and no notice has been given in sufficient time that payment shall be made at the office and principal place of business stipulated in the contract, a tender of payment to the local agent, whether received by him or not, will excuse the policy-holder and prevent the forfeiture. To hold otherwise would open the door to the grossest frauds upon the part of these foreign insurance companies. The policy-holder who had been depriving himself and family of the comforts, if not the necessaries of life for years, to provide, as he supposed, something for his helpless family when he shall have been laid in the grave, and when the company's coffers shall have in part been filled with his hard earnings, the company can withhold the receipt; and when he comes, perhaps, on the last moment in which payment can be made, he is for the first time informed that he must pay in New York, or all he has paid will be forfeited—a thing which it is impossible for him to do, and which would be gross injustice. It is said, and is in proof, that these receipts are furnished to the local agents through the general agency for the state, and if the agents' accounts at the principal office are not satisfactory, the receipts are withheld. The answer to this is, that it is a thing about which the policy-holder is not presumed to know anything; it surely cannot be held that he is responsible, or to be affected by dereliction in duty of the company's agent, over whom he has no sort of control. John B. Morey is not presumed to have known of the absence of the receipt, and its absence could have had no influence upon his unfortunate aeglect; and however much it is to be regretted that the widow and orphan shall be deprived of the maintenance and support a kind husband and father intended for them, the rules of law must be applied to the facts, which being done, necessarily results in favor of the defendant.

JUDGMENT FOR DEFENDANT.

NOTE.—Upon the question how far the agent of an insurance company may waive the conditions of the policy in regard to the payment of premiums, and make engagements independently of the policy which shall bind the company, see May on Insurance, § 360, and the cases there cited. The question does not seem to be involved in this case, since the learned judge seems to have concluded that the promise which the agent made, that he would give the insured notice of the falling due of the successive premiums, was merely the tender of a friendly office in his personal capacity, and was not an engagement made in his character of agent, such as might possibly bind his principal.

Under the facts surrounding the contract of life insurance in litigation in Hamilton v. New York Mut. Life Ins. Co., 9 Blatchford, 234, 251–3, it was held that the insurer was bound to provide, in the state where the defendant resided at the time the policy was taken out, and continued afterwards to reside, an agent to receive the premiums which should accrue, appointed and qualified according to the statute law of such state on the subject, and that the insurer was not obliged to pay the premiums elsewhere. Substantially the same ruling was made in view of the Virginia statute, in Manhattan Life Ins. Co. v. Warwick, 20 Grattan, 614. Extending these principles to the principal case, and supposing a similar statute to exist in Mississippi, the conclusion of the learned judge would seem to be well warranted, that a tender to the local agen would be sufficient, and that the assured would not be obliged to make payment elsewhere, whether such agent had been provided with the proper receipts or not.

Railway Aid Bonds—Defences.

CHARLES H. KEANE v. FORT SCOTT (CITY OF).

In Circuit Court of the United States, District of Kansas, November Term, 1873.

Before DILLON, Circuit Judge.

Defences where Vote Embraces two Propositions.—When there is legislative authority to a municipal corporation to issue negotiable bonds, it cannot defend against them in the hands of a *bona fide* holder for value, on the ground that the question submitted to the voters embraced two distinct propositions, or for non-compliance by the railroad company to which the bonds were issued with the terms of the ordinance authorizing their execution and delivery.

This is an action upon coupons attached to bonds issued by the city of Fort Scott, dated December 1, 1870, in payment of a subscription to the stock of the Missouri, Kansas and Texas Railway Company.

The case is submitted to the court upon an agreed statement of facts, consisting of the charters of the Union Pacific Railway Company, southern division, incorporated February 20, 1868, and the change of its name, February 3, 1870, to the "Missouri, Kansas and Texas Railway Company." Also the charter of the Labette and Sedalia Railroad Company, and of the Missouri, Kansas and Texas Railroad Company.

On July 25th, 1870, an ordinance of the city of Fort Scott was enacted submitting the question of subscribing $75,000 to the capital stock of the Missouri, Kansas and Texas Railway Company, and $25,000 for the purpose of procuring the right of way for the road of said company through the corporate limits of the city, and the purchase of grounds for depot and machine shops to be donated to the company. Ballots to be "for" or "against" the stock and donation.

The proposition carried, and the city was authorized to subscribe $75,000 to the stock of the M. K. and T. Railway Company, on the following fundamental conditions:

1. The company within six months to cause to be constructed and completed its road from Sedalia, Missouri, to Fort Scott, Kansas, and as soon thereafter as practicable, southwesterly.

2. The said company shall make said line from Sedalia the "great through line by the way of Fort Scott to the southwest," etc.

3. Fort Scott to be the end of a division of the road, at which engine houses and machine shops shall be erected before they are at certain other points, and as soon as the road needs them.

4. Bonds shall be issued by the city for the $75,000.

5. These bonds are to be placed with a trustee chosen by the parties, "to be kept by the trustee until such time as said company shall have constructed and put in practical operation its road from Sedalia to Fort Scott, when he shall deliver them to the

company," said trustee to give bond to the city for $150,000 for a faithful performance of his duties.

6. The stock of the city to be sold and assigned for a nominal consideration to the Land Grant Railway and Trust Company of New York. (Stated to be a Pennsylvania corporation in New York.)

7. Depot grounds, etc., to be procured by the city and donated to the company.

On December 5th, 1870, an ordinance of the city of Fort Scott was passed, reciting the previous ordinance, and that the proposition submitted received 523 votes for, and 3 against, and "that the terms and conditions upon which the said subscription, and the issue and delivery of said bonds [were made], have been complied with by said company," and ordaining,

1. That the city subscribe for the $75,000 of stock, and it appoints John G. Stuart its agent to make the subscription.

2. For one dollar the city assigns its stock to Parsons, trustee for the capitalists who constructed the road.

3. The city attorney is ordered to prepare the bonds of the city to bear date December 1, 1870, etc., to be signed, etc., and delivered to the company; and these are the bonds to which the coupons in suit were annexed.

Grant & Smith, for the plaintiff; *Stewart & McComas*, for the defendant.

DILLON, Circuit Judge.—Upon the agreed statement of facts, the court holds:

1. That the plaintiff is presumed to be a holder for value, and without notice of the coupons in suit, and is entitled to recover unless there is some defence available to the city as against such a holder.

2. The only defence open to the city against such a holder of its bonds, is want of power to issue them; mere irregularities in the exercise of the power will not avail.

The defence that the bonds are void because the stock was never subscribed, if true as matter of fact, is not available to the defendant. The bond recites that "it is issued under the laws of Kansas, and in pursuance of an ordinance of the city of Fort Scott, approved July 22, 1870—$75,000 subscription to the Missouri, Kansas and Texas Railway Company." This recital estops the city to make this defence, and hence it is not a good defence against a holder of the bonds for value before due and without notice.

The same observations hold in reference to the provisions of the ordinance, that the stock issued for the bonds should be transferred for a nominal consideration by the city, and the failure of the company in respect to the erection of machine shops. It is contended that the submission to the voters was not according to the statute authorizing "the city council of any city of the state to subscribe for the stock of any railway company of the state upon such conditions as it may prescribe, provided there is a majority vote in favor of the subscription." (General Laws, 1868, chap. 23, sec. 51.)

The objection is that the ordinance submitted a proposition to vote $75,000 to the stock of this railway company, and $25,000 for another purpose, and that a joint subscription is unauthorized. But the vote was taken in this manner, and carried by 523 votes against 3 votes, and the bonds have been issued. Now a defect or irregularity in the manner of making the submission will not invalidate the bonds in the hands of innocent holders for value; and under the decision of the Supreme Court of the United States it is doubtful, if there had never been an election, but the bonds were nevertheless issued and in the hands of innocent holders for value, whether the defence of want of election would avail the municipality which issued them. But here this point does not arise; for there was an election and the proposition carried, and the ordinance authorizing the issue of the bonds so recites. The objection to the submission would probably have been well taken in a suit to prevent the issue of the bonds, but it comes too late now.

Another defence is that the bonds are void because the railroad company to which they were issued had no authority or power in law to build the road into or through the city of Fort Scott. But upon the agreed statement of facts this does not appear, and from the agreed statement taken in connection with the recitals in the act of March 2, 1871, relating to the Missouri, Kansas and Texas Railway Company, it would seem that the company had such power; and it appears from the ordinance of December 5, 1870, that the company did build the road and in all respects comply with the terms and conditions on which it was to become entitled to the $75,000 subscription. The decisions of the Supreme Court of the United States upon the subject of municipal railway-aid bonds cover the case, and under those decisions the defences of the city here relied on are not good.

JUDGMENT FOR THE PLAINTIFF.

Copyright at Common Law—Jurisdiction of the State Courts—Infringement.

ISAAC S. ISAACS v. AUGUSTIN DALY.

Superior Court New York City, Special Term, March, 4, 1874.

Before CURTIS, J.

1. **Copyright at Common Law.**—The right of an author or his assignee to the exclusive use of his literary productions exists at common law, independently of all statutes.

2. —— **Jurisdiction of State Courts.**—Such being the case, the state courts have jurisdiction to protect literary property. The act of congress of July 8, 1870, affords an additional remedy merely, and does not affect the pre-existing jurisdiction.

3. —— **Infringement—Title of Play.**—The mere fact that a dramatic composition bears the same title as a prior dramatic composition, does not, if this circumstance is wholly accidental, and if the compositions are in other respects dissimilar, constitute the latter composition an infringement of the copyright of the proprietor of the former.

CURTIS, J.—This action is brought to restrain the performance of a play called "Charity," also for accounting of profits and for $20,000 damages. The 19th of December, 1873, the plaintiff deposited in the copyright office, at Washington, the title of a play called "Charity," and copyrighted such dramatic composition. In January following the defendant procured the exclusive right, as he alleges, to possess and use manuscript copies of an entirely different play, by William S. Gilbert, also called "Charity," the latter being then played at the Haymarket, London. The defendant, in February following, prepared it for performance, and on the 27th of that month advertised it for a public representation on the 3d of March, the day subsequent to the hearing of this motion for an injunction. It is objected that the action should have been commenced in the federal courts. This court has long exercised a jurisdiction to protect literary property, and the act of congress, in 1870, conferring jurisdiction in this class of suits upon the federal courts, appears to afford an additional remedy—without affecting the pre-existing jurisdiction—in respect to the rights this plaintiff has in the play, and which exist at common law, independently of all statutes. (Palmer v. De Witt, 47 N. Y. R. 532.) The other question, as to whether the defendant should be enjoined from performing the play under the name of "Charity," is not free from difficulty. The affidavits fail to satisfy me that the plaintiff would be injured on the ground claimed by him, that Mr. Gilbert's play has been unfavorably received and criticised when played. It is not alleged that there has been any bad faith on either side. The complication appears to be purely accidental. Should the dramatic performance be enjoined because the word "Charity" is the title of each? No question exists as to any similitude or imitation in either. It is simply to be considered whether the use of the word "Charity" in plaintiff's play for a title, and his copyrighting the play, give him the exclusive use of that word as a title in the public performance of plays. Charity is a virtue that has been employed and portrayed in every

stage and department of art for all ages. Would it be just that an engraver who has copyrighted a design that he entitled "Charity" should restrain another engraver from vending to the public a different design which the latter also designates as "Charity," both being works of art symbolizing the same virtue, but differing in plan and execution? If this principle is answered in the affirmative the same principle might be invoked by a publisher who has copyrighted a sermon called "Charity," by "——," to enjoin the sale by another publisher of a sermon, utterly different in composition, also called "Charity," written by some other person. The law favors literature and art, and while it seeks to protect all in the enjoyment of their property and their rights, it does not abridge the field of occupation and enterprise. The use of the word "charity" as a designation for any work of art or literature, cannot ordinarily be monopolized by any one person. There may be occasions were a title is made use of in bad faith, or to promote some imposition, or to inflict a wrong, when a court of justice should interfere to prevent its use, or to compensate a party who has in consequence sustained an injury. But the present case does not appear to be one where the court is called upon to interfere for any of these reasons. Both parties having acted in good faith, it would be inequitable to subject the defendant to loss, who has prepared for representation and advertised Mr. Gilbert's play under the name of "Charity." Nothing is shown by which it appears that the plaintiff would sustain loss by changing the name of his play if he desired to do so, and I do not find any case where a court has granted a plaintiff, under the circumstances appearing in the papers, the relief he seeks by the present application. The motion for an injunction must be denied with costs.

INJUNCTION REFUSED.

NOTE.—The case of Palmer v. DeWitt, above referred to, contains a very clear exposition by ALLEN, J., of the rights of the owner of literary property as they exist at common law. The distinction is very clearly drawn between what is sometimes termed "copyright before publication," and the exclusive right to *multiply copies* after publication. It is this "copyright before publication" which the common law regards as property independently of any statute so declaring it, and which courts of common law jurisdiction will, without any statutory warrant for so doing, exercise their power to protect. Concerning the nature of this right, it may be said that it consists simply in the right of the author or his assignee to the first publication of his manuscript. "The author of a literary work or composition," said ALLEN, J., in the case above cited, "has by law a right to the first publication of it. He has a right to determine whether it shall be published at all, and if published, when, where, by whom, and in what form. This exclusive right is confined to the first publication. When once published, it is dedicated to the public, and the author has not at common law any exclusive right to multiply copies of it or to control the subsequent issue of copies by others. The right of an author or proprietor of a literary work to multiply copies of it to the exclusion of others, is the creation of the statute. This is the right secured by the 'copyright' laws of the different governments." "It is certain," said YATES, J., in Miller v. Taylor, 4 Burr. 2303, 2379, "that every man has a right to keep his own sentiments if he pleases; he has certainly a right to judge whether he will make them public or commit them only to the sight of his friends. In that state the manuscript is, in every sense, his peculiar property, and no man can take it from him, or make any use of it which he has not authorized, without being guilty of a violation of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication, and whoever deprives him of that priority is guilty of a manifest wrong, and the courts have a right to stop it." Mr. Phillips, in his valuable work on copyright, page 2, speaking of this right of first publication, says: "It is the exclusive privilege of first publishing any original material product of intellectual labor. Its basis is property. A violation of it is an invasion of property; and it depends entirely upon the common law." After quoting these and other authorities, the learned judge in Palmer v. DeWitt, *supra*, defines this right as follows: "An author of an unpublished literary work has, then, a property in such work, recognized and protected both here and in England, and the use and enjoyment of it is secured to him as of right. This property in a manuscript is not distinguishable from any other personal property. It is governed by the same rules of transfer and succession, and is protected by the same process, and has the benefit of all the remedies accorded to other property, so far as applicable. It is personal, as other movable property, personal in legal contemplation, following the person of the owner, and is governed by the law of his domicile." The court further held that an alien friend was entitled to the same measure of protection in this species of property as a citizen. Accordingly in that case, where a copy of an unpublished drama had been surreptitiously obtained in England and published in this country without the license or consent of the proprietor, it was held that he might maintain an action in the courts of New York to restrain its publication.

Notes of Cases Decided at the February Term, 1874, of Supreme Court of Missouri, at St. Joseph.

[Courtesy of Litt. R. Lancaster, Esq., of St. Joseph.]

1. **Criminal Procedure—Assistant Prosecuting Counsel.**—State v. Joseph P. Hamilton. There is no law in this state to prevent the employment of counsel to assist the prosecuting attorney in carrying on a prosecution, and the peculiar position or attitude that such counsel shall assume in reference to the trial of such cause, is a matter to be arranged among themselves, under control of the trial court.

2. ——. ——. **Closing Argument.**—It is discretionary with the trial court to permit assistant counsel to close the argument in the case, if the prosecuting attorney waives his right to do so, and such discretion will not be reviewed here.

3. **Re-examination of Witness.**—When a party has examined his witness, and the other party has cross-examined him, it is discretionary with the trial court whether a re-examination will be allowed, and this court will not interfere unless manifest abuse and injustice is shown.

1. **Sheriff's Deed—Effect of by Relation.**—William S. Leach v. George Kœnig. A sheriff's deed relates back to the day of sale, as to the defendant in the execution and his privies, and to strangers subsequently purchasing with notice, and vests title in the execution purchaser from the day of sale, but no title passes to a bidder at a sheriff's sale until the amount of the bid is paid and the deed delivered.

2. **Landlord and Tenant—Attornment to New Landlord.**—A tenant in possession of property under a lease cannot recognize another landlord under a subsequent lease, without the consent of the first landlord, and such attornment, if made, is void.

Bills and Notes—Endorser Presumed Innocent Purchaser.—Amanda Corby, executrix, &c., v. Squire T. Butler. The endorser, by delivery of a negotiable note, before maturity, is presumed to be an innocent holder for value, and must be so treated in absence of evidence to the contrary, and without such proof no evidence is admissible of fraud in procuring the note.

1. **Defaulting Guardian — Bankruptcy—Remedy of Sureties.**—Wesley Halliburton v. Calvin T. Carter. A defalcation by a guardian is not relieved by a discharge in bankruptcy, nor is his contingent liability to his security on his bond as such guardian discharged, where such security pays the debt, and the securety can recover for money paid to his use when he pays the defalcation after the discharge in bankruptcy of the principal.

2. ——. ——. ——. The relations of principal and surety of a fiduciary trust are not in any manner affected by bankruptcy proceedings. They remain in the same position toward each other, and to the *cestui que trust*, as if no bankruptcy proceedings had ever been commenced.

Suit to Quiet Title—Disclaimer.—Evan Jourdan v. Allen Stephens. In a proceeding under our statute to quiet title, if the defendant disclaims all title adverse to the plaintiff, tha ends the case.

Fencing Railway Track.—Michael Slattery v. The St. Louis, K. C. & N. R. R. Co. A railroad must be fenced as required by sec. 43, 1 Wag. 310, in all enclosures, whether timbered or not. [See F. & P. Railway Co. v. Lull in 11 Cent. Law Jour. 131.

Money Paid for Extension of Time—Usury.—Arthur Kirkpatrick v. F. W. Smith and T. B. Weakley. Money paid for an extension of time on a note cannot be recovered back as usury, nor be applied as payment on the note.

Possession of Mortgagee of Realty—Rents and Profits.—Augustus Honaker v. David Shough. A defendant in an action for possession of land, who becomes equitably entitled to a mortgage, may protect his possession against the mortgagor or his heirs, but must account for rents and profits toward the mortgage debtor till redeemed.

Landlord and Tenant—Notice to Quit.—George W. Stephens v. A. J. Brown. When a lease has a definite period to run, no notice to quit is necessary, nor is any notice to quit necessary where the tenant denies or disclaims his landlord's title.

1. Deed of Bargain and Sale—Construction.—Benjamin Cornelius *et al.* v. Margaret Smith *et al.* Deeds of bargain and sale originated under the statute of uses, and are used to make family settlements in which express trusts may be created in favor of beneficiaries, the same as executory devises, and must demand th same liberal construction, &c.

2. Partition—Equitable Title.—A suit for partition of equitable real estate may be maintained by an action in equity.

Description of Town-Site—Mistake.—John G. Wood city attorney, *ex rel.* J. S. Rogers *et al.* v. Trustees of the Town of Cameron. A town built up and located on section 23, but described in the act of incorporation as on section 24: *Held*, the section is a false particular which may be stricken out and leave enough to demonstrate the locality. The town itself by name, as laid out on the ground, sufficiently demonstrates its locality, and is better known than the numbers of the United States survey.

Corporate Existence—Failure to Record Articles—Individual Liability of Directors.—Peyton J. Hunt v. Lucius Salisbury. Suit on a note given as directors of a corporation. The corporation organized under articles of association duly signed, acknowledged and recorded, but did not file the same with the secretary of state until after suit brought. *Held*, that the corporation had no legal existence to transact business until the articles of incorporation were filed with the secretary of state, and that defendants are liable *individually* on the note.

Note executed by one Partner and endorsed by the other to raise Money—Remedy of Endorser after Paying.—Benson Bond v. Luke W. Burris. Where one partner as maker, and another as endorser, makes a note to raise money to pay the debt of the firm, the endorser cannot take up the note and sue on it at law, and recover against his co-partner. It constitutes a debt in his hands against the firm, and must come in as such in a final settlement.

Tender on Terms.—Geo. W. Adams & J. M. Scott v. Mary A. Helm, Executrix, etc. A debtor has the right to prescribe the terms of a tender, and the creditor may accept or refuse. If he accept it, he must take the tender on the terms prescribed by the creditor.

Estoppel in Pais.—Wm. A. Donaldson v. Henry Hibner. Estoppels in pais act on *existing*, and not on subsequently acquired rights. If a party has no title at the time, he may afterwards acquire the title, and such subsequently acquired title will not pass by an alleged former estoppel.

Railway Negligence—Killing Cattle.—John Crafton v. H. & St. Jo. R. R. Co. Salt spilled on a railroad track in unloading cars, naturally attracts cattle, and when plaintiff's cow was so attracted and killed, this is evidence conducing to prove negligence on part of railroad company. It was not the plaintiff's, but the defendant's business to remove such salt, and no contributory negligence in plaintiff to let his cow run out, as he might presume the servants of defendant would do their duty.

1. Sheriff's Deed—Amendment of.—John H. Ware v. Wm. Johnson. A sheriff acts by authority of the statute in sales of land, and no court except the court under whose process he acts can supervise and make him correct his deed.

2. Execution of Power—Equity Jurisdiction.—A court of equity cannot aid the imperfect execution of a statutory power.

3. Color of Title—Possession—Enclosures.—A party holding color of title to a tract of land may take possession in good faith without making actual enclosures, but not so with a mere trespasser without color of title.

1. Corporations—Suits Against—Denial of Corporate Existence—Appearance.—Thomas Seaton v. The C. R. I. & P. R. R. Co. The appearance of a corporation as defendant, dispenses with proof of its corporate existence, and is conclusive evidence of its corporate existence for the purposes of such case.

2. Suits for Penalties—Double Damages—Who must Sue.—Double damages, though punitive in their nature, are not strictly penalties which belong to the state, referred to in sec. 42, 1 Wag. Stat. 310; but the parties injured are the real parties in interest under sec. 43; and they, and not the state, must sue.

1. Corporation—Liability for Malicious Prosecution by Agent or Servant.—Thomas S. Gillette v. The Mo. V. R. R. Co. A railroad company is liable to an action for malicious prosecution by an agent or servant when such alleged malicious prosecution is done by such agent or servant in the course of his employment, and within the scope and power of his duties, and exemplary damages may be recovered for such acts.

2. ——, ——, What necessary to fix Liability.—But in order to hold the company liable, the act complained of must not only come within the scope of the authority conferred upon such agent or servant, but it must appear that the act done was done in the performance of business, coming within the purview of the objects and purposes for which the corporation was organized, and the powers conferred by its charter.

3. ——, ——, ——, Prosecution of Crimes.—The prosecution of crimes against the state does not come within the scope of the powers conferred upon a railroad company by its charter; and therefore its officers and agents cannot bind the stockholders of any such company in their corporate capacity by such proceedings.

Charles Sumner.

This distinguished statesman died on the 11th instant, at his residence in Washington, having on the previous day occupied his seat in the senate. We do not propose entering upon an extended notice of his life. He has been so long an active combatant in the arena of national politics that his character as a lawyer had well nigh passed out of the professional mind. He was one of that numerous class of Americans whose lives have afforded illustrations of how eminently a sedulous study of the law is calculated to qualify a person for success in public life. In his earlier years Mr. SUMNER cultivated the law as a science—pursued it, not as a means of gaining a livelihood, but rather as an intellectual pursuit. He was called to the bar in 1834, at the age of twenty-three, and commenced the practice of the law in Boston. Although business rapidly sought him, he refused several advantageous offers of partnership. He was the pupil and friend of Mr. Justice STORY, who appointed him reporter of his circuit, in which capacity he published three volumes, known as Sumner's Reports. During the absence of Justice STORY, Mr. SUMNER filled his place as professor of law in Harvard University. So high an opinion did the former entertain of Mr. SUMNER's ability and attainments as a lawyer, that he expressed a desire to see him occupy a seat on the Supreme Bench of the United States. Upon the death of Justice STORY, Chancellor KENT expressed a strong preference for Mr. SUMNER as the most suitable person to fill the chair of Dane Professor of Law in Harvard University, left vacant by that great jurist; but Mr. SUMNER instructed his friends not to press his appointment, and it was not made. He spent three years in Europe, during which time he was the recipient of distinguished honors, such as have seldom been bestowed upon young men, much less Americans, at the hands of the judges of Westminster Hall, and the most eminent jurists of England and the continent, including Mittermaier and Savigny. During this time his name appears as one of the editors of the American Jurist. This was one of the ablest law periodicals ever published in this country. Returning to America, he edited, with elaborate notes, in connection with J. C. Perkins, Esq., the Reports of the younger Vesey, in twenty volumes. This was his last contribution to the literature of the law.

In 1845 he engaged actively in politics, and in 1850 entered the senate as the successor of Daniel Webster. Since that time his public life has been part of the history of the country. One of the last acts of his life recalled his early and steadfast love of jurisprudence, which the contests of a quarter of a century of political life had in no degree diminished. We allude to the occasion when the subject of the confirmation of Chief Justice WAITE came before the senate in executive session. On that occasion Mr. SUMNER made a speech in which he reviewed in his most masterly style of eloquence the judicial career of STORY, MARSHALL, and others of the illustrious names which have adorned that great court, and whose labors have contributed in a lasting degree to the peace and honor of their country. At the end of his speech, the nomination of Mr. WAITE as chief justice was unanimously confirmed.

While many American statesmen have been found wanting towards the close of their career—while some have outlived their usefulness and even their fame—it was the extreme felicity of Mr. SUMNER to live to see the animosities which had been engendered by the fierce contests in which he had been engaged in a great measure pass away, and to see the charity and rectitude of his motives universally recognized by his countrymen.

Removal of Causes from State to Federal Court—Amount in Dispute.

We learn through the press that an important decision on this subject was recently rendered by United States Circuit Judge DRUMMOND, in Wisconsin, in the case of Zinkeisen & Co. v. Hufschmidt. The action was brought in the state court to recover the value of a quantity of wheat. Upon the defendant's application, an order of removal to the circuit court of the United States was granted by Judge SMALL, of the state court. At the time he made the order, no pleading or writ was on file showing the amount in dispute except the petition of the defendant, asking for the removal. After the order was granted, Zinkeisen & Co. filed a complaint in the state court, alleging the cause of action and claiming damages in a stated sum. In that complaint they obtained an order from Judge SMALL to show cause why the order made by him, removing the cause into the federal court, should not be vacated and set aside. On hearing the order to show cause, Judge SMALL refused to vacate the order of removal. On the first day of the session of the United States circuit court after the order of removal, Hufschmidt brought into the court a certified copy of the papers filed in the state court, including the complaint filed after the order of removal was granted, and asked that said papers might be filed and the cause docketed in that court. The motion was argued before one of the judges of the United States district court, who denied it, holding that the complaint filed after the order of removal was conclusive as to the amount in dispute. A motion was then made before Judge DRUMMOND to vacate and set aside the order made by the district judge, and that the cause be docketed, and after argument the order was set aside and the plaintiffs required to file a declaration. This settles a question of practice which has perplexed the profession in the state, and also settles that when the plaintiff chooses to commence suit by summons, and not file either his summons or complaint, the defendant, in a proper case for removal, may enter an appearance and show by petition that a suit has been commenced, and the amount claimed exceeds $500, and tender a proper bond, and thus secure a removal of his cause into a federal court; and when he has done this, it is not in the power of the plaintiff to destroy that right by filing a complaint in the state court reducing his damages below $500, and that, when a cause is once properly in the federal court, the plaintiff cannot then file a declaration laying his damages at less than $500, and cut off the jurisdiction. In other words, when the jurisdiction of the federal court has once attached, it cannot be taken away by any act of the plaintiff.

Book Notices.

A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION. By Thomas M. Cooley, LL.D., one of the Justices of the Supreme Court of Michigan, and Jay Professor of Law in the University of Michigan. Third edition, with considerable additions, giving the results of recent cases. Boston: Little, Brown & Co. 1874.

We are glad to welcome a new edition of Judge COOLEY'S great work, not so much for the additional matter it contains, as for the renewed proof it affords of its almost unprecedented popularity. Its extraordinary success does not more than equal its intrinsic merits. We have had occasion thoroughly to examine it in every part, and have never failed to find convincing proofs of the careful research and great learning it embodies. Our judgment is that a work of equal value on this subject could have been produced by but few lawyers in the country. Judge COOLEY'S previous labors, studies, long judicial experience, ripe learning and sound judgment peculiarly fitted him to write upon American Constitutional Law; and his treatise from the first took rank among the productions of KENT, STORY, REDFIELD and PARSONS. This is no light praise, we know; for the works of these authors upon jurisprudence are certainly unsurpassed, and we may be pardoned if we add, in our judgment, unequalled by like productions in any country in the world. Foreigners, it is well known, have often disparaged the *general* literature of America, but have been compelled to concede the merits of its works upon the law. Even the liberal and enlightened Mr. Buckle says that "in no other country are there so few men of great learning, and so few men of great ignorance; * * and *with the single exception of jurisprudence* scarcely anything has been done for those vast subjects on which the Germans are incessantly laboring." (Hist. of Civilization, vol. 1, ch. 5.) The causes of this exception he endeavors to explain, but notices in passing, that Burke was early struck by the partiality of the Americans for works on law, and with the fact that even then nearly as many copies of Blackstone's Commentaries were sold in America as in England. Mr. Buckle adds: "Of this state of society, the great works of Kent and Story were, at a later period, the natural result."

The lawyers of America have done their full share in making the American name known and honored abroad, and it has so happened that this has been more effectually done by their general treatises than by the reported decisions of the courts. Of late years we frequently find the English judges citing, and with expressions of respect, the works of Kent, Story, Parsons, Greenleaf, etc., but we more rarely see any special reference to the judgments of our courts. Story is better known abroad than Marshall, and Parsons than Chief Justice Shaw. On the other hand, American lawyers and courts have from the first drawn freely from the fountains of English law. The productions of English lawyers and the judgments of English judges have always been familiar to the American bar, but the reverse is not so generally the case. This gives to an American lawyer, in the production of treatises on the law, great advantages over his English brother, and accounts, in part, for the number and excellent character of our works on jurisprudence.

In a familiar passage Macaulay portrays in eloquent words the extent of the influence of Greece upon the world, and declares that "Her empire is imperishable, * * and that her influence and glory will survive, fresh in eternal youth, exempt from mutability and decay, immortal as the intellectual principle from which they derived their origin and over which they exercise their control." Scarcely less vast, and probably not less enduring, are the triumphs of English law. It has followed the English flag into every country where English energy and enterprise have established themselves. More than all, it followed our ancestors here and has spread over the civilized portions of the American continent. If the traveller from the Thames visits the Supreme Court at Washington, or a court sitting on the banks of the Mississippi, or thousands of miles beyond on the shores of the Pacific, he will find lawyers citing and judges relying upon the decisions of the learned judges who have presided or are now presiding in Westminster Hall.

In the preparation of his work Judge Cooley has availed himself of whatever of English law or English history could contribute to it, and in addition has had the benefit of the decisions of the federal and state courts of his own country. The result is that he has produced a work distinguished for thoroughness of research, for learning, for original discussions, and for sound, temperate and conservative views—a work which has justly made him famous, and which is an honor to American legal literature.

Such is our estimate of its great value, and it gives us sincere pleasure publicly to express it. The general plan and character of the work are so well known that we do not feel called upon to notice in detail the subjects of which it treats. The second edition was published in 1871, and the third differs from it only in referring with adequate fullness to the decisions since rendered, which are quite numerous, bearing upon the topics discussed.

DIGEST OF FIRE INSURANCE DECISIONS IN THE COURTS OF GREAT BRITAIN AND NORTH AMERICA. By H. A. Littleton and J. S. Blatchley. 3d edition, revised and enlarged by Clement Bates, of the Cincinnati Bar. New York: Baker, Voorhis & Co. 1873. pp. 795.

This is the third edition of this excellent work. The favor with which it has been received by the profession, affords another example that it never fails to appreciate a work on which has been expended sufficient skillful labor to make it worthy of its approving judgment. We have been familiar with this Digest since its first appearance, and have had constant occasion to resort to it as an aid in investigating questions connected with the law of fire insurance. The credit of its production belongs to the state of Iowa. Mr. Littleton was practically acquainted with insurance, and Mr. Blatchley was one of the most industrious and accomplished lawyers in the State. These two performed the greater part of the labor of preparing the work, but they were assisted by John L. Hawey, Esq., whose death, under distressing circumstances, soon after the appearance of the first edition, was deeply deplored by his friends and by the bar of the state, who felt a just pride in his abilities and promise.

The work was distinctly limited to fire insurance, and wisely so, and

embraced a digest of *all the decisions* in Great Britain and America (including Canada), from the earliest times down to the date of publication. It was, throughout, an original work—prepared from an actual examination of over 2,500 volumes, and gave the substance of the points decided of 930 cases, in 1,525 sections. A useful feature was that it gave the date of each decision. This is especially important in the study of a branch of the law which is constantly developing, and whose progress has been attended with so many judicial conflicts as the law of insurance. The second edition appeared in 1868, under the editorial charge of Stephen G. Clarke, Esq., who, by bringing it down to that date, added to the original work an abstract of 316 cases and 691 additional sections. This edition by Mr. Bates includes not only all the original work, but also the sections added by Mr. Clarke, and an addition of 362 cases, coming down to June, 1873. The work of the present editor has been carefully performed.

Whoever has this Digest and the recent elementary work of Mr. May, heretofore noticed (1 CENT. LAW JOUR. p. 48), has the means of ascertaining, with the least possible trouble, the existing state of the law on the subject of fire policies, or, at least, the sources where it may be found.

THE AMERICAN LAW TIMES AND REPORTS. NEW SERIES. Monthly. New York: Hurd & Houghton. Cambridge: The Riverside Press. Edited by Rowland Cox, Esq., of Washington, D. C.

The new series of this publication, beginning with 1874, embraces two features: a digest of decisions published *in extenso* in the various American legal periodicals, and reports of leading cases on important topics of the law. The cases digested and reported are in separate series, so that the reports can be bound in a separate volume at the end of the year. The editor makes his selections with much discrimination; and for typographical beauty this publication is unsurpassed by anything of the kind, whether issued in this country or in England.

THE NASHVILLE (Tenn.) COMMERCIAL REPORTER, weekly, $2 00 per annum, has adopted the feature of a "law department," in which is published the decisions of the supreme court of Tennessee long in advance of the regular reports. The "law department" is under the editorial charge of Maj. Josiah R. Hubbard, an accomplished lawyer, by whom the cases are reported, with carefully prepared head-notes and appropriate editorial comments. This feature renders the Commercial Reporter well deserving of the patronage of the legal profession in Tennessee.

Notes and Queries.

A correspondent asks whether "the chairman of the board of trustees" of towns incorporated under the general law of Missouri (2 Wag. Mo. Stat. 1318, § 16), is a *judicial officer*, and as such authorized to hear and determine causes arising under the town ordinances.

ANSWER.—The statute clothes the chairman of the board of trustees with power to hear and determine all civil actions for fines and penalties accruing to the town corporation, subject to the right of appeal to the circuit court; gives him power to issue execution, and upon a return of no property, to imprison the defendant.

In view of the terms of the statute, we cannot understand what notion our correspondent had in his head that prompted the question he asks. If a person who is vested with power to sit as a justice in the trial of causes, to render judgment, to issue execution and to imprison the defendant, is not a judicial officer, we are at a loss to know what kind of an officer he is. If, as our correspondent suggests, the question was raised in the case of O'Connor v. The Town of Memphis, supreme court of Missouri, October term, 1873, we presume the counsel for the plaintiff in error had the discretion not to press it before the court. It is not noticed in the opinion.

United States Supreme Court — Decisions Last Week.

[Compiled from the New York Herald.]

Private Corporations—Directors have no Power to Increase Capital Stock.—No 577. The Chicago City Railroad Company v. Ailtoner. Appeal from the circuit court of the northern district of Illinois. The directors of the company, without consultation or calling a meeting of the stockholders, resolved to increase the capital stock of the company from $1,250,000 to $1.500,000. The appellee, a stockholder, objected to the proceeding and filed his bill to prevent the increase, insisting that it could not be lawfully done without the concurrence of the stockholders. The court below sustained the position and restrained the act. That decree is here affirmed on the ground that a change so organic and fundamental as that of increasing the capital stock of a corporation beyond the limit fixed by the charter cannot be made by the directors alone, unless expressly authorized thereto. Mr. Justice STRONG delivered the opinion.

Taking Private Property for Public Use—Writ of Error.—No. 555. Baltimore and Potomac Railroad Company v. Trustees of Sixth Presbyterian Church. Error to the supreme court of the District of Columbia. The church recovered a judgment against the company for $11,500 damages for running the road through Sixth street in front of the church edifice. The company obtained a writ of error, and a motion was made to dismiss it on the ground that the law under which the assessment of damages was made by the jury in the case was a Maryland statute, which, by the construction of the Maryland courts, does not allow an appeal or writ of error. Mr. Justice MILLER delivered the opinion of the court denying the motion, holding that the writ lies in such a case, notwithstanding the objection urged. The early decisions of this court, it is said, held that the right to the writ exists by virtue of the appellate power of this court as defined in the act of 1801, creating the circuit court of the district, and the court is governed by that act.

Insolvency—Marshalling of Assets — Charleston Fire Loan Bonds.—No. 153. Baring Bros. v. Dabney Morgan & Co. Error to the supreme court of South Carolina. This case involved the distribution of the assets of the bank of the state of South Carolina, on its own account and as the financial agent of the state, now in the hands of a receiver, and particularly the question of the title of the fire loan bondholders and the fire loan stockholders—bonds and stock negotiated by the bank, under the authority of the state, for the rebuilding of Charleston after the fire of 1838. The bonds were taken up in Europe and the stock in the United States. The former had the guarantee of the bank, and the latter did not. The decision is that the fire loan bondholders are on an equal footing with the other creditors of the bank, and that the fire loan stockholders are not creditors of the bank at all, and not entitled to any participation in the fund. The assets are directed to be distributed among the creditors of the bank in proportion to the amount of claims, reducing those arising during the war to their values in national currency. This is an affirmation of the judgment of the supreme court of the state. Mr. Justice BRADLEY delivered the opinion. Mr. Justice STRONG dissented.

Construction of Will.—No. 200. Croply v. Cooper. Appeal from the supreme court of the District of Columbia. Wm. Cooper left a will containing the following clause: "To my daughter, Elizabeth Croply, at her mother's death, I give and bequeath the rent of my house on Pennsylvania avenue in the city of Washington, for and during her life, and at her death it is my will that the said house be sold and the avails therefrom become the property of her children, or child, when he, she or they have arrived at the age of twenty-one years, the interest in the meantime to be applied toward their maintenance." The daughter had one child at the death of the testator, who lived to be twenty-one years of age, who died intestate and unmarried, in the lifetime of his mother. The mother, Elizabeth Croply, now claims the property, under the clause of the will quoted. The court below sustained a demurrer, holding that the devise over to the children or child of Elizabeth Croply was contingent upon its, or their, surviving the mother, and, also, attaining the age of twenty-one years. That decree is here reversed, where it is held, in substance, that the testator vested the residuum in the child or children of Elizabeth Croply, and there left it without further disposition to now go to the mother. Mr. Justice SWAYNE delivered the opinion.

Foreclosure of Mortgage—Defence of Fraud—Rights of Bona Fide Holder.—No 184. Sawyer v. Pickett *et al.* Appeal from the circuit court or the northern district of Illinois. This was the foreclosure of a mortgage given by the appellees to the Fox River Valley Railroad Company to secure a subscription note, and by the company assigned to the appellant. The defence was that the note and mortgage were obtained by fraud of the company practiced to induce property owners in the locality of the appellee to subscribe to its stock. The court below sustained the defence and dismissed the bill. That decree is here reversed, the court holding that the defence is not satisfactorily proven, and that, as against the appellant, a *bona fide* holder, without notice, it should not be sustained. Mr. Justice HUNT delivered the opinion.

Admiralty—Collision—Negligence and Fault of Libellant.—No. 210. Schooner Mary H. Banks v. Steamer Falcon. Appeal from the circuit court for the district of Maryland. This was the reversal of a decree dismissing the libel of the schooner in a case of collision on the Chesapeake Bay in July, 1867, the principle affirmed being that it was the duty of the steamer to see the schooner as soon as she was to be discovered, watch her progress and direction, observe the general situation, and thus keep out of her way, having

at command all the means to do so—ample sea-room, calm weather and water, abundant light, and no other vessel in proximity on either side. It is also said the steamer was grossly at fault in approaching too near the schooner and at too high a rate of speed, which, as asserted, was the real cause of the disaster. Mr. Justice SWAYNE delivered the opinion.

Claims against Government—Transportation of Stores—Right to Employ other Contractors.—No. 63. Caldwell v. United States. Appeal from the court of claims. This was an action on a contract for the transportation of military stores and supplies in the west. The government maintained that there was no covenant to employ Caldwell on the route, to the exclusion of other persons or means, but the court of claims gave judgment for the claimant for a portion of the amount alleged to be due. The judgment is here reversed and the defence of the government sustained. Mr. Justice HUNT delivered the opinion.

Construction of Will—Limitation over.—No. 164. Clarke *et al.* v. Johnson *et al.*, executors. Appeal from the circuit court for the southern district of New York. The appellants sought to recover of the defendants as executors of one Boorman, who was last surviving executor of their great-grandfather, J. R. Smith, the present value of certain lands of which he died seized. The complainants were children of the son of a daughter of the testator, their grandfather dying before their grandmother. A codicil to the will provided for the children of a daughter whose husband should survive her, but not for the children of a daughter who should survive her husband. Hence it was held below and is affirmed here that the limitation over to the grandchildren provided by the codicil does not inure to the benefit of the complainants. Mr. Justice MILLER delivered the opinion.

Land Law—Conveyance of Ancestor's Title.—No. 199. Zautzinger v. Gunton. Appeal from the supreme court of the District of Columbia. This was the ffirmance of a decree of the supreme court of the District determining that certain lands conveyed by the parents of the wife of Zautzinger to Gunton terminated their interest in the property and vested it in Gunton and the Bank of Washington, of which he is president, and concludes the complainants as heirs. Mr. Justice MILLER delivered the opinion.

Pleading in Federal Court—Allegation of Citizenship.—No. 211. Morgan ex S. N. Gay. Error to the circuit court of Louisiana. The testator was charged as the drawee and accepter of an inland bill of exchange of which one Goodrich was the drawer, and with being the drawer of another of which Pilcher and Goodrich were the drawees. The plaintiff did not allege that the payee and first endorser was a citizen of a state other than Louisiana, only averring that he was a citizen of Louisville, Ky. This allegation is deemed insufficient to give the court jurisdiction, and the judgment is reversed and the cause remanded, that amendments may be made to the pleadings showing the citizenship of the endorsers of the bills, and whether such as to give jurisdiction. Mr. Justice STRONG delivered the opinion.

Action on Foreign Judgment—Defendant may show that he was not served with Process in Original Suit.—No. 477. Knowles v. Gaslight Company. Error to the circuit court for the district of Minnesota. This was an action on a judgment by the Logansport (Ind.) Gaslight Company on a judgment recovered in Indiana against Knowles. The plea was that the Indiana court did not acquire jurisdiction by personal service on Knowles. The company relied on the sufficiency of the judgment record to show that the court did acquire jurisdiction, and the court below held the record to be conclusive of the question. The judgment was for the company. This court reversed the decision, applying the doctrine laid down in Thompson v. Whitney, the opinion in which was read just in advance of the one in this case, that Knowles was entitled to show that he was not served with process in the case in which the judgment was entered, and that the court did not, therefore, acquire jurisdiction therein. Mr. Justice BRADLEY delivered the opinion.

Infringement of Patent—Decision upon the Facts.—No. 181. Klein v. Russell. Error to the circuit court for the northern district of New York. This was an action to recover for an alleged infringement of a patent for improvement in the process of preparing bark-tanned sheep and lamb skins for gloves, by the agency of "fat liquor," an article produced by the scouring of deerskins after tanning in oil. The judgment below was for the patentee, the verdict having found the fact of infringement, and it is sustained here. Mr. Justice SWAYNE delivered the opinion.

Infringement of Patent.—No. 87. Mitchell v. Tilghman. Appeal from the circuit court for the southern district of New York. In this case the appellee recovered in the court below for the infringement of his patent for a new process in the use of fat acids in the manufactures to which they are adapted. The decree is here reversed, the court sustaining the theory of the defence that there was no infringement of the patent in the process used by the defendant. The court say that differences between the two processes so great as that exhibited in the record relieve the case, in their judgment, from all doubt, and warrant the conclusion that the process under which the respondent works is substantially different from that of the complainant. Mr. Justice CLIFFORD delivered the opinion. Dissenting, Justices SWAYNE, STRONG and BRADLEY; not sitting, Mr. Justice DAVIS.

Bankruptcy—Fraudulent Preference.—No. 196. Cook *et al.* v. Tullis. Appeal from the circuit court for the southern district of Ohio. In this case Cook and others are the assignees in bankruptcy of one Homans, an insolvent, and as such claimed to hold a demand note for $7,000, which before his failure he had deposited in the place of certain bonds and securities which Tullis had left with him for safe-keeping, using the securities for his own purposes. This was done without the knowledge of Tullis, and about a month before the failure. The note maturing, Homans took measures for its collection On the day of the suspension, and nearly a month before the petition was filed, he notified his attorney that the note belonged to Tullis. Under these circumstances the court below found that the note was the property of Tullis, and that the transfer was not a proceeding intended to give him the preference over other creditors contrary to the statute. That decision is affirmed here. Mr. Justice FIELD delivered the opinion. Mr. Justice MILLER dissenting.

Affirmance by Divided Court.—No. 194. Clinkenbeard *et al.* v. The United States. Error to the circuit court for the southern district of Ohio. The questions involved are not stated. Mr. Justice CLIFFORD announced the affirmance of the judgment in this case by a divided court.

Appeal—Final Decree.—In the case of Governor Kellogg, of Louisiana, v. H. C. Warmoth, in the Louisiana circuit, the court was petitioned to allow an appeal to the Supreme Court of the United States, but the motion has been refused on the ground that the record does not show a final decree.

Parties in Equity—Joinder of Complainants.—In the case of The City of Davenport *et al.* v. Darks, the latter sued in the circuit court for Iowa on behalf of himself and others as stockholders in the Chicago, Rock Island and Pacific Railroad Company, to restrain the city from enforcing a tax for general revenue against the company. A demurrer insisted that the company should have been joined in the action; that the complainant had a complete remedy at law, and that the tax was a valid one upon the property of the company. The court overruled the demurrer and enjoined the tax. Without passing upon the other questions, it is here held that the company should have been joined, and as it was not, the demurrer should have been sustained. The decree was reversed. Mr. Justice DAVIS delivered the opinion.

Public Lands—Entry before Proclamation of Sale.—No. 205. Eldred v. Sexton. Error to the supreme court of Wisconsin. This was a contest concerning the title to certain lands in Wisconsin. It is here held that the plaintiff's entries were invalid, and rightfully cancelled because they were made before the lands had been proclaimed for sale at the price fixed by law, and that as the entries of the defendant were made after the lands were properly put into the market they were valid. Judgment affirmed. Mr. Justice DAVIS delivered the opinion.

Demurrer Overruled.—No. 8. Original. State of Florida v. Anderson. Demurrer overruled.

Legal News and Notes.

—CASSIUS G. FOSTER has been confirmed United States district judge for the district of Kansas.

—MESSRS. TAVEL, EASTMAN & HOWELL, of Nashville, have just issued a "Criminal Code and Digest of Criminal Cases decided by the Supreme Court of Tennessee," compiled by Hon. James M. Quarles, of Clarksville. Gen. Quarles is one of the most accomplished lawyers of Tennessee.

—WM. L. GROSS, Esq., proposes to the Illinois legislature to furnish the new revision of the statutes of that state at $2 per copy. If this proposition is accepted, Illinois will have reached the golden age of cheap statutes. So much for competition.

—THERE appears to be no definite prospect of the passage of the bankrupt bill as it recently came from the senate. It is stated that a majority of the house judiciary committee adhere to their first decision in favor of a total repeal, and will not yield their concurrence to the bill which has passed the senate. They are, however, going through the entire law, scanning every sentence, and will make such thorough work of it that a bill may finally be produced which will be satisfactory to both houses. The involuntary bankruptcy clause will doubtless be repealed, but if the house judiciary committee utterly refuse to change their views, no bankrupt law is likely to pass this session.